

SUBCHAPTER I—AGENCY SUPPLEMENTARY REGULATIONS

PART 1871—MIDRANGE PROCUREMENT PROCEDURES

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SOURCE: 61 FR 55758, Oct. 29, 1996, unless otherwise noted.

1871.000 Scope of part.

This part prescribes policies and procedures for the acquisition of supplies, including commercial items, and services.

Subpart 1871.1—General

SOURCE: 64 FR 19926, Apr. 23, 1999, unless otherwise noted.

1871.101 Purpose.

The purpose of this part is to establish policies and procedures that implement the MidRange procurement process.

1871.102 Applicability.

(a) This part applies to all acquisitions at NASA, except as provided in 1871.401-4(a)(3), the aggregate amount of which is not more than \$10,000,000 including options, and for commercial items (FAR Part 12) not more than \$25,000,000 including options. This part may be used for commercial item contracts above \$25,000,000 at the installation's discretion.

(b) For other than commercial items, if the Government estimate exceeds the limits of paragraph (a) of this section, the acquisition will be processed under FAR and NFS procedures applicable to large acquisitions (see FAR Parts 14 and 15). When the estimate is within the threshold of paragraph (a) of this section and the acquisition was started using these procedures but the offered prices/costs exceed the MidRange ceiling, the acquisition may continue under MidRange procedures, provided that—

(1) The price/cost can be determined to be fair and reasonable;

(2) The successful offeror accepts incorporation of required FAR and NFS clauses applicable to large acquisitions; and

(3) The acquisition does not exceed \$15,000,000 for the total requirement.

1871.103 Definitions.

The following terms are used throughout part 1871 as defined in this subpart.

(a) MidRange procurement procedure means a set of procedures contained in this part and within the applicability of 1871.102.

(b) Request for Offer (RFO) means the solicitation used to request offers for all authorized MidRange procurements.

(c) Clarification and Discussion are used as defined in FAR 15.306.

(d) Commercial item is used as defined in FAR 2.101.

1871.104 Policy.

(a) Unless stated otherwise, acquisitions conducted using MidRange procedures shall comply with all applicable parts of the FAR and NFS (e.g. FAR 15.4 and 1815.4—Contract Pricing, and FAR 19.7 and 1819.7—The Small Business Subcontracting Program).

(b) Acquisitions conducted under Part 1871, unless otherwise properly restricted under the provisions of FAR Part 6, are considered to be full and open competition after exclusion of sources when set aside for competitions among small business concerns (FAR 6.203), 8(a) concerns (FAR 6.204), or HUBZone small businesses (FAR 6.205).

(c) Options may be included in the acquisition provided they conform to 1871.102(a).

(d) The appropriate part 1871 post-selection processes (negotiation, award, and publication of award) may be used to the extent applicable for Small Business Innovation Research (SBIR), broad agency announcements, unsolicited proposals, and Small Business Administration 8(a) acquisitions within the applicability of 1871.102(a).

(e) The NASA Acquisition Internet Service (NAIS) will be used to the maximum extent practicable to disseminate advance acquisition information and conduct part 1871 acquisitions.

(f) Use of locally generated forms is encouraged where their use will contribute to the efficiency and economy of the process. NASA Forms 1667, Request for Offer, and 1668, Contract, or

computer generated versions of these forms, may be used as the solicitation and contract cover sheets, respectively, except that the SF1442, Solicitation, Offer, and Award (Construction, Alteration, or Repair), shall be used for construction acquisitions and the SF1449, Solicitation/Contract/Order for Commercial Items, shall be used for commercial item acquisitions. Contractor generated forms or formats for solicitation response should be allowed whenever possible. There is no requirement for uniform formats (see FAR 15.204).

Subpart 1871.2—Planning and Requirements Process**1871.201 Use of buying team.**

MidRange procedures are based on the use of a buying team to conduct the procurement. The concept is to designate individuals who are competent in their respective functional areas, provide those individuals with the basic authority to conduct the procurement and hold them accountable for the results. The buying team will normally consist of one technical member and one procurement member, but may be augmented with additional members as necessary. Personnel providing normal functional assistance to the team (e.g., legal, financial) will not be considered a part of the team unless so designated. To function properly, the team should be given the maximum decision authority in matters related to the procurement. When higher level management approvals remain essential, it will be incumbent upon the functional team member to obtain such approvals.

1871.202 Organizational responsibilities.**1871.202-1 Requiring organization.**

The requirements organization shall appoint, by name, the technical member of the buying team. This individual will normally be an end user or the one most familiar with the technical aspects of the requirement. The individual appointed, whatever the relationship with the procured item, is expected to totally fulfill the responsibilities to the buying team.

1871.202-2 Procurement organization.

The procurement organization shall appoint the procurement member of the buying team. This individual shall be a warranted contracting officer or a contract specialist with broad latitude to act for the contracting officer. The procurement member shall be the team leader with the ultimate responsibility to conduct the procurement.

1871.202-3 Supporting organizations.

Buying team members may require additional team members to perform specialized functions or to assist in the evaluation of offers. Requests for supporting members shall be made by the organization identifying the need for the support and directed to the appropriate management level in the supporting organization. Supporting team members, once designated for the team, shall fulfill all applicable responsibilities to the team as other members.

1871.202-4 Center management.

Center managers shall, to the maximum extent practical and consistent with their responsibilities to manage the Center mission, convey sufficient authority to members of the buying team to conduct the procurement. Administrative or technical approvals should be minimized, and where deemed essential, facilitated to the maximum extent practicable. Center managers should lend their full support to the buying team should problems arise from the procurement.

1871.203 Buying team responsibilities.

(a) The buying team shall conduct the procurement in a manner that best satisfies the user requirements and meets the norms expected of a Government procurement. Team members should develop open communications, rely on decisions of other responsible functional team members and meet their obligations to the team. The team will typically—

- (1) Refine the final specifications for the solicitation;
- (2) Decide the most appropriate solicitation method;
- (3) Establish milestones for the procurement;

- (4) Finalize the evaluation criteria;
- (5) Develop the RFO and model contract; and
- (6) Evaluate offers and determine the awardee.

(b) The procurement member of the buying team shall lead clarifications, discussions, and negotiations; shall be the source selection official; and shall conduct debriefings.

1871.204 Small business set-asides.

(a) Except as provided in paragraphs (b) through (f) of this section, each MidRange acquisition shall be reserved exclusively for small business concerns. (See FAR subparts 19.5 and 19.13. See FAR 19.1305(a) regarding priority considerations).

(b) The requirement for small business MidRange set-asides does not relieve the buying office of its responsibility to procure from required sources of supply, such as Federal Prison Industries, Industries for the Blind and Other Severely Handicapped, and multiple award Federal Supply Schedule contracts.

(c) Procurements not conducted as small business set-asides and under less than full and open competition require a Justification for Other than Full and Open Competition pursuant to FAR Part 6.

(d) If the buying team procurement member determines that the conditions for a HUBZone set-aside, HUBZone sole source, or small business set-aside cannot be satisfied, the buying team may purchase on an unrestricted basis utilizing MidRange procedures. The buying team procurement member shall document the contract file with the reason for the unrestricted acquisition.

(e) Acquisitions required to be conducted under Full and Open Competition by the Small Business Competitiveness Demonstration Program, FAR subpart 19.10, will not be set aside for small business.

(f) If the buying team proceeds with a small business MidRange set-aside and receives an offer from only one responsible small business concern at a reasonable price, the contracting officer will normally make an award to that concern. However, if the buying team does not receive a reasonable offer

from a responsible small business concern, the buying team procurement member may cancel the small business set-aside and complete the acquisition on an unrestricted basis utilizing MidRange procedures. If the acquisition is a HUBZone set-aside and only one acceptable offer is received, the buying team should proceed with the award in accordance with FAR 19.1305(d). The buying team procurement members shall document in the file the reason for the unrestricted purchase.

(g) Each model contract under a small business MidRange set-aside shall contain the clause at FAR 52.219-6, Notice of Total Small Business Set-Aside.

(h) Each model contract under a HUBZone MidRange set-aside shall contain the clause at FAR 52.219-3, Notice of Total HUBZone Set-Aside.

[63 FR 71604, Dec. 29, 1998, as amended at 64 FR 19927, Apr. 23, 1999]

Subpart 1871.4—Request for Offer (RFO)

1871.400 General.

In MidRange procedures, solicitation of sources shall be accomplished by use of an RFO. The RFO will be solely a solicitation document incorporating only those elements of information required to solicit the offer. Offers will be provided on a model contract furnished with the RFO.

1871.401 Types of RFO'S.

The RFO may be used for all types of procurements to which MidRange is applicable. The distinguishing difference will be the evaluation and award criteria specified in the RFO. This, in turn, will be driven by the buying team's decisions on the extent of discussion required, the amount of non-price factors that will influence the award and the amount of competition available. If the conditions in FAR 6.401(a) are met, the RFO's described in 1871.401-1 and 1871.401-2 shall be used; otherwise, RFO's described in 1871.401-3, 1871.401-4, 1871.401-5, or 1871.401-6 may be used. Once the evaluation and award criteria have been specified in the RFO, the procurement must conform to the procedures applicable to

these criteria, unless changed by formal amendment to the RFO.

1871.401-1 Sealed offers.

(a) Policy. RFO's may specify that award will be made to the low, responsive, responsible offeror providing the most advantageous offer considering only price and price-related factors. This method shall be used when (1) time permits the solicitation, submission, and evaluation of sealed offers; (2) award will be made on the basis of price and other price-related factors; (3) conducting discussions with the offerors is not necessary; and (4) a reasonable expectation of receiving more than one offer exists. The RFO shall be in compliance with the requirements of FAR part 14 relating to Sealed Bidding.

(b) Procedures. (1) The RFO shall request offerors to provide a complete offer by the closing date specified.

(2) In accordance with FAR part 14, offers (whether received by facsimile or sealed envelope delivery) shall be publicly opened at the designated time and place. Interested members of the public will be permitted to attend the opening. Offers shall be abstracted pursuant to FAR part 14 and be available for public inspection. The abstract shall be included in the contract file.

(3) All offers shall be examined for mistakes in accordance with FAR 14.407-1 and 14.407-2. The buying team shall determine that a prospective contractor is responsible and that the prices offered are reasonable (see FAR 14.408-2).

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for small disadvantaged business (SDB) concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19927, Apr. 23, 1999]

1871.401-2 Two-step competitive acquisition.

(a) Policy. (1) RFO's may specify that evaluation and award may be conducted in two distinct steps, similar in concept to "Two Step Sealed Bidding." The MidRange Two Step process should be used when it is desirable to award to the lowest, responsive, responsible offeror after determining that the initial technical offer, or the revised technical offer, is acceptable.

(2) The procedures of FAR 14.503-2(a) shall be used once Step Two of this process begins.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified. Price offers are requested to ensure that they are accomplished in a timely manner and to reduce the time required for Step Two.

(2) Step One. The technical offer will be evaluated to determine if the product or service offered is acceptable. The buying team may proceed directly to Step Two if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional offers acceptable and thereby increase competition would not be in the Government's interest. If this is not the case, the buying team procurement member shall enter into discussions and request offeror(s) whose offer(s) is susceptible to being made acceptable to submit additional clarifying or supplementing information to make it acceptable (see FAR 14.503-1). It is expected that these discussions will be conducted on an informal basis. After completion of discussions, the buying team shall proceed to Step Two.

(3) Step Two. If discussions were held, the buying team shall afford all offerors who have submitted acceptable offers and those offers with whom discussions were conducted, an opportunity, by a common date, to revise their price offers. No changes to technical offers will be permitted during this process. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each offeror. The procedures at 1871.401-1(b) (2) and (3) shall then be followed.

(4) The Government will award a contract to the low, responsive, responsible offeror, whose offer conforms to the RFO and will be most advantageous to the Government, considering only price and the price-related factors included in the solicitation.

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19927, Apr. 23, 1999]

1871.401-3 Competitive negotiated acquisition not using qualitative criteria.

(a) Policy. (1) RFO's may provide for discussion of all aspects of the offer but award is based on the technically acceptable offer having the lowest price (if fixed price) or the lowest most probable cost (if cost reimbursable). This method should be used when qualitative factors are not material in the award decision, but it is important to assure that technical offers and contract terms are fully compliant with the Government's needs. This method also permits direct discussion of price with offerors and is particularly appropriate when different approaches can be offered to satisfy the Government's need.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215-1, will be included in all RFO's for competitive negotiated procurements not using qualitative criteria except for solicitations for commercial item acquisitions.

(3) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

(4) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns; and

(ii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

(b) Procedures. (1) The RFO shall request offerors to provide both a technical and a price offer by the closing date specified.

(2) *Initial evaluation.* The buying team shall review each offer to determine if all required information has been provided. No further evaluation shall be made of any offer that is deemed unacceptable because it does not meet the technical requirements of the RFO and is not reasonably susceptible to being made so. Offerors may be contacted for clarification purposes only during the initial evaluation. Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefore and excluded from further consideration. Documentation for such rejection should consist of one or more succinct statements of fact that show the offer is not acceptable. No documentation is required if all offers are deemed to be acceptable or reasonably susceptible to being made so.

(3) *Determination of finalists.* From among the acceptable offers and those susceptible to being made acceptable, the buying team shall rank the offers based on price (or most probable cost) and exclude any whose price/most probable cost precludes any reasonable chance of being selected for final award. The remaining offers constitute the "finalists" for the contract. Only in exceptional cases will this number be less than two offers. The procurement buying team member shall succinctly record the basis for the decision.

(4) *Discussions.* The procurement buying team member shall lead discussions with each finalist. The discussions are intended to assist the buying team in fully understanding each finalist's offer and to assure that all finalists are competing equally on the basis intended. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.306. It is expected that discussions will be conducted on an informal basis with each finalist. After completion of discussions, each finalist shall be afforded an opportunity to revise its offer to support and clarify its offer. A reasonable amount of time (Normally less than 5 working days) will be afforded for the revision. The amount of

time given shall be the same for each finalist. Such discussions are not required if there are sufficient acceptable offers to ensure adequate price competition, and if further time, effort and delay to make additional proposals acceptable and thereby increase competition, would not be in the Government's interest.

(5) *Selection.* The procurement team member shall be the source selection official. The source selection official may elect to make selection in lieu of determining finalists provided that it can be demonstrated that (i) selection of an initial offer(s) will result in the lowest price/cost to the Government and (ii) discussions with other acceptable offerors are not anticipated to change the outcome of the initial evaluation relative to evaluated price/cost. It is expected that the source selection statement will not ordinarily exceed one page and that the basis for the decision will be apparent upon review of the informal worksheets used in the evaluation process. These informal worksheets shall be included in the contract file.

(6) The names of offerors determined to be finalists or the name of the offeror selected for contract award will be electronically transmitted to all offerors. This will serve as notification to those offers that were not selected for further evaluation (see 1871.505).

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9966, 9967, Feb. 27, 1998; 64 FR 19927, Apr. 23, 1999]

1871.401-4 Competitive negotiations using qualitative criteria (Best Value Selection).

(a) Policy. (1) MidRange procurements shall normally use the BVS source selection method, prescribed in part 1871, subpart 1871.6, when it is desirable to base evaluation and award on a combination of price and non-price qualitative criteria.

(2) The RFO should reserve the right to award without discussion based on the initial offers submitted. FAR 52.215-1, will be included in all RFO's for competitive negotiated procurements using qualitative criteria except for solicitations for commercial item acquisitions.

(3) In exceptionally complex procurements, a source selection method other than MidRange Best Value Selection may be more appropriate. This may be appropriate in cases in which the following factors cannot be accommodated within the MidRange/BVS selection methodology:

- (i) The ability to predefine the value characteristics that will constitute the discriminators among the offers;
- (ii) The complexity of the interrelationships that must be evaluated;
- (iii) The number of evaluators required to address the disciplines that will be involved in the offers; or
- (iv) The impact that the procurement may have on higher level mission management (level of selection official) or future procurements.

(4) See FAR 15.304, FAR 15.305(a)(2), and 1815.305(a)(2) regarding the evaluation of past performance.

(5) When proceeding with an unrestricted acquisition see—

(i) FAR Subpart 19.11 regarding use of the price evaluation adjustment for SDB concerns. SDB concerns that choose the FAR 19.11 price evaluation adjustment shall receive no consideration under a MidRange BVS value characteristic that addresses the FAR 19.1202 SDB participation evaluation;

(ii) FAR 19.1202 regarding the evaluation of the participation of SDB concerns in performance of the contract. For BVS MidRange acquisitions, SDB participation shall be evaluated as a BVS value characteristic (see 1871.603(b)); and

(iii) FAR Subpart 19.13 regarding use of the price evaluation preference for HUBZone small business concerns.

(b) Procedures. (1) The buying team will determine which of the source selection methodologies is most appropriate to the specific procurement.

(2) The team shall record its rationale for selecting a methodology rather than BVS. Once this decision is made, the team shall no longer function as a MidRange buying team, but shall follow the instructions prescribed in the local procedures for the source selection method.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9966, 9967, Feb. 27, 1998; 64 FR 19928, Apr. 23, 1999]

1871.401-5 Noncompetitive negotiations.

(a) Policy. (1) The RFO may be used as the solicitation method for noncompetitive procurements.

(2) MidRange procedures may be used in noncompetitive acquisitions to the extent they are applicable.

(b) Procedures.

(1) The buying team shall request pricing information in accordance with FAR 15.402 and 15.403.

(2) The technical member of the buying team shall provide technical assistance to the procurement member during evaluation and negotiation of the contractor's offer.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19928, Apr. 23, 1999]

1871.401-6 Commercial items.

(a) Policy. (1) MidRange procedures are considered consistent with the requirements of FAR part 12, Acquisition of Commercial Items. In the event of a conflict, however, FAR part 12 takes precedence.

(2) MidRange procedures may also be used, to the extent applicable, for commercial item acquisitions accomplished under FAR subpart 13.5, Text Program for Certain Commercial Items.

(3) Contract type shall be in accordance with FAR 12.207.

(b) Procedures. The offices will be evaluated in accordance with applicable procedures, and shall include consideration of technical, past performance, and price.

[61 FR 55758, Oct. 29, 1996, as amended at 62 FR 4477, Jan. 30, 1997; 63 FR 71604, Dec. 29, 1998]

1871.402 Preparation of the RFO.

(a) The RFO shall provide all standard information required for the offeror to submit an offer.

(b) The RFO shall contain space for all necessary additional instructions to offerors. As a minimum, the RFO shall contain the following:

(1) Incorporation by reference of all required standard provisions.

(2) A provision notifying offerors that standard Representations and Certifications will be required.

(3) Evaluation and award criteria.

(4) A provision requiring offerors to submit offers on an attached model contract.

(c) Requirements for the content and format of the offer should be the minimum required to provide for proper evaluation. Offerors' formats should be allowed to the maximum extent possible.

(d) Facsimile offers, defined by FAR 14.202-7 and FAR 15.203(d), are authorized for MidRange procurements.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9967, Feb. 27, 1998]

1871.404 Protection of offers.

A facsimile machine(s) shall be dedicated for receipt of offers and placed in a secure location where offers received on it can be safeguarded. All offers submitted shall be recorded, sealed in an envelope marked with the RFO number and taken to the buying team procurement member. Facsimile attendants shall make a good faith effort to inspect the document for completeness and legibility. If the attendant believes there are missing or illegible pages, the document will be promptly referred to the buying team procurement member for notification to the offeror that it should resubmit the offer. The Government shall not assume responsibility for proper transmission.

Subpart 1871.5—Award

1871.501 Representations and certifications.

Upon determination of the successful offeror, the buying team procurement member will determine if the offeror has on file valid Representations and Certifications. If the offeror has not completed the required forms, or they have expired, the offeror will be requested to provide the forms promptly. Should the offeror refuse to provide the required Representations and Certifications or fail to meet a required condition, the buying team shall reject the offer and proceed to the next highest ranked offeror who is responsive and responsible.

1871.502 Determination of responsible contractor.

Contractor responsibility shall be determined in accordance with FAR part 9.

1871.503 Negotiation documentation.

The prenegotiation memorandum, if required, and the results of negotiation will be in abbreviated form and will be approved by the buying team.

1871.504 Award documents.

Contract award shall be accomplished by contracting officer execution of the contract document and providing a paper copy to the successful offeror. If facsimile documents were used in the evaluation process, the successful offeror may be required to execute original copies of the contract to facilitate legibility during the administration phase of the contract.

1871.505 Notifications to unsuccessful offerors.

For solicitations that were posted on the NAIS, a preaward notice shall be electronically transmitted to the offerors. In addition, contracting officers shall comply with the preaward notices for small business programs in FAR 15.503(a)(2).

[64 FR 19928, Apr. 23, 1999]

1871.506 Publication of award.

An award notice shall be posted on the NAIS for 7 calendar days after posting, if the contract offers subcontracting opportunities or if it is subject to the Trade Agreements Act. The information required by FAR 5.207 shall be included in the award notice in abbreviated form.

1871.507 Debriefing of unsuccessful offerors.

The procurement buying team member shall conduct debriefings if requested.

Subpart 1871.6—“Best Value Selection”

1871.601 General.

(a) Best Value Selection (BVS) seeks to select an offer based on the best combination of price and qualitative merit of the offers submitted and reduce the administrative burden on the offerors and the Government.

(b) BVS takes advantage of the lower complexity of MidRange procurements and predefines the value characteristics which will serve as the discriminators among offers. It eliminates the use of area evaluation factors and the highly structured scoring.

1871.602 Specifications for MidRange procurements.

BVS refines the traditional approach to preparing specifications. BVS envisions that the requirement will focus on the end result that is to be achieved and will serve as a statement of the Government's baseline requirements. The offeror will be guided in meeting the Government's needs by a separate set of value characteristics which establish what the Government considers to be valuable in an offer beyond the baseline requirement. These value characteristics will be performance based and will permit the selection of the offer which provides better results for a reasonable marginal increase in price.

[64 FR 36606, July 7, 1999]

1871.603 Establishment of evaluation criteria.

(a) The requiring organization will provide, along with the requirement, a list of value characteristics against which the offers will be judged. There is no limit to the number or the type of characteristics that may be specified. The only standard will be whether the characteristic is rationally related to the need specified in the specification. Characteristics may include such factors as improved reliability, innovativeness of ideas, speed of service, demonstrated delivery performance, higher speeds, ease of use, qualifications of personnel, solutions to operating problems, level of service provided on previous similar contracts, or any of nu-

merous other characteristics that may be of value to the Government in satisfying its needs.

(b) For unrestricted acquisitions, small disadvantaged business (SDB) participation shall be evaluated as a BVS value characteristic (see FAR 19.1202-3). In order to receive consideration under the value characteristic, the offeror must propose a target for SDB participation greater than the baseline requirement. The baseline requirement for SDB participation is zero or no SDB participation. SDB concerns that choose the price evaluation adjustment under FAR 19.11 shall receive no consideration under this Mid-Range BVS value characteristic. Like other value characteristics, offerors meeting the baseline, but proposing no value above the baseline, and which are otherwise acceptable, are to be considered for award if they are finalists.

(c) Past performance may be included as a value characteristic or considered as a separate evaluation criteria. If considered as a separate criterion, the relative importance of past performance in relation to cost and technical must be defined in the solicitation.

(d) Cost and technical will be considered equal in importance. The value characteristics will not be assigned weights.

(e) All subsequent evaluations will consider these characteristics when determining the finalists or making the final selection for award.

[61 FR 55758, Oct. 29, 1996, as amended at 64 FR 19928, Apr. 23, 1999]

1871.604 Evaluation phases.

1871.604-1 Initial evaluation.

(a) Offers will be reviewed to determine if all required information has been provided and the offeror has made a reasonable attempt to present an acceptable offer. Offerors may be contacted only for clarification purposes during the initial evaluation. No further evaluation shall be made of any offer that is deemed unacceptable because:

(1) It does not represent a reasonable effort to address itself to the essential requirements of the RFO or clearly demonstrates that the offeror does not

understand the requirements of the RFO;

(2) It contains major technical or business deficiencies or omissions or out-of-line costs which discussions with the offeror could not reasonably be expected to cure; or

(3) In R&D procurement, a substantial design drawback is evident in the offer and sufficient correction or improvement to consider the offer acceptable would require virtually an entirely new offer.

(b) Offerors determined not to be acceptable shall be notified of their rejection and the reasons therefor and excluded from further consideration.

(c) *Documentation.* If it is concluded that all offers are acceptable, then no documentation is required and evaluation proceeds. If one or more offers are not acceptable, the procurement member of the team will notify the offeror of the rejection and the reasons therefor. The documentation should consist of one or more succinct statements of fact that show the offer is not acceptable.

1871.604-2 Determination of "Finalists".

(a) All acceptable offers will be evaluated against the requirement and the value characteristics. Based on this evaluation, the team will identify the finalists from among the offers submitted. Finalists will include the most highly rated offerors in accordance with FAR 15.306(c)(1) and 1815.306(c)(2). Generally, finalists will include the offer having the best price (or lowest most probable cost) and the offer having the highest qualitative merit, plus those determined to have the best combination of price and merit. Offers not qualifying as finalists will be excluded from the balance of the evaluation process.

(b) The selection official may elect to make selection in lieu of determining finalists, provided it can be clearly demonstrated that

(1) Selection of an initial offer(s) will result in the best value for the Government, considering both price and non-price qualitative criteria;

(2) Discussions with other acceptable offerors are not anticipated to change

the outcome of the initial evaluation relative to the best value offer(s), and

(3) The solicitation contains a provision permitting award without discussions.

(c) *Documentation.* If finalists are identified as discussed in paragraph (a) of this section, the documentation expected and required to result from this phase of evaluation is approximately one-quarter of a page for each finalist. The documentation shall succinctly describe how the value characteristics in the RFO were provided by the offeror and cost/price considerations that caused the offer to qualify as a finalist. The evaluator(s) shall not be required to justify why other offers provided less qualitative merit. It is expected that, should the decision be challenged, the documented reason for selection, when compared with the non-selected offer, shall clearly demonstrate the difference that resulted in non-selection. It is expected and recommended that all informal worksheets used in the evaluation process be included in the contract file. When selection of the successful offeror(s) is made, the buying team shall document the selection in accordance with 1871.604-4(c).

(d) Offerors determined not to be finalists or not selected for contract award will be electronically notified.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9966, Feb. 27, 1998]

1871.604-3 Discussions with "Finalists".

(a) The procurement team member shall lead discussions with each finalist. Care must be exercised to ensure these discussions adhere, to the extent applicable, to the guidelines set forth in FAR 15.306. It is expected that these discussions will be conducted on an informal basis with each finalist.

(b) After completion of discussions, each finalist shall be afforded an opportunity to revise its offer. A reasonable amount of time (normally less than 5 working days) will be afforded for the revision. The amount of time given shall be the same for each finalist.

[61 FR 55758, Oct. 29, 1996, as amended at 63 FR 9967, Feb. 27, 1998]

1871.604-4

1871.604-4 Selection of “Best Value” Offer.

(a) The procurement team member shall be the source selection official.

(b) The BVS source selection is based on the premise that, if all offers are of approximately equal qualitative merit, award will be made to the offer with the lowest evaluated price (fixed-price contracts) or the lowest most probable cost (cost type contracts). However, the Government will consider awarding to an offeror with higher qualitative merit if the difference in price is commensurate with added value. Conversely, the Government will consider making award to an offeror whose offer has lower qualitative merit if the price (or cost) differential between it and other offers warrant doing so.

(c) *Documentation.* Rationale for selection of the successful offeror shall be recorded in a selection statement which succinctly records the value characteristics upon which selection was made. The statement need not and should not reveal details of the successful offer that are proprietary or business sensitive. Since the value characteristics are expressed in performance terms, the reasons for selection can focus on results to be achieved, rather than the detailed approach the offeror will use. The statement shall also comment on the rationale used to equate cost and qualitative merit. Little or no additional analysis is required when the selected offeror possessed the highest merit and lowest price. When a marginal analysis is made between value characteristics and price (or cost)—in most cases this will be a subjective, integrated assessment of all pertinent factors—specific rationale should be provided to the extent possible. It is expected that the statement will not ordinarily exceed one page. Where the procurement is closely contested, it would be prudent to expand on the rationale provided in the statement.

(d) The name of the offeror(s) selected for award shall be electronically transmitted to the offerors which will serve as a notification to those offerors that were not selected (see 1871.505). The selection statement may be made available at the buying team's discretion.

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